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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2009 SEP 16 PM 3:15

JEANNE HICKS, CLERK- ✓

BY: C. Flick

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

CR 2008-1339

Plaintiff,

Division 6

v.

STEVEN CARROLL DEMOCKER,

STATE'S MOTION FOR LEAVE TO
FILE DELAYED RESPONSE TO
DEFENDANT'S MOTION TO DISMISS
DEATH PENALTY FOR LACK OF
PROBABLE CAUSE OR, IN THE
ALTERNATIVE, FOR A PROBABLE
CAUSE HEARING ON THE STATE'S
NOTICED AGGRAVATING
CIRCUMSTANCES

Defendant.

The State has given notice that it will seek the death penalty against Defendant as a result of five statutory aggravating circumstances. Currently, the State is awaiting financial analysis information from C.P.A. Richard Echols. As this information is critical to the State's case, the State now file this Motion for Leave to File a Delayed Response regarding this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

The State has alleged the following statutory aggravating circumstances according to A.R.S. § 13-703 and will present evidence supporting each aggravator at hearing:

A. 13-703(f)(2): The defendant has been or was previously convicted of a serious offense, whether preparatory or completed. Convictions for serious

1 offenses committed on the same occasion as the homicide, or not committed on
2 the same occasion but consolidated for trial with the homicide, shall be treated
3 as a serious offense under this paragraph.

4 The State will show that on July 2, 2008, Defendant entered and remained in the
5 Carol Kennedy's residence located at 7485 Bridal Path, Prescott, AZ unlawfully with intent
6 to kill the Carol while he was armed with a deadly weapon or a dangerous instrument, to-wit:
7 a golf club.

8 There is evidence that Defendant took a golf club to the Carol's home just days
9 before the brutal murder. There is also evidence that Defendant entered the home from the
10 ranch land directly behind the home after he stashed his bicycle in the brush while Carol was
11 out on her traditional evening run and laid in wait for her to return. The State will show that
12 Defendant committed First Degree Burglary in order to accomplish Carol's brutal murder.

13 **B. 13-703(f)(5): The defendant committed the offense as consideration for**
14 **the receipt, or in expectation of the receipt, of anything of pecuniary value.**

15 It is a fact that Defendant was a senior financial advisor who, in the months before the
16 murder, had recently seen his compensation dip dramatically. At one point Defendant was
17 forced to borrow a substantial amount of money from his family just to make ends meet. It is
18 also a fact that Defendant and Carol both had a significant amount of unsecured debt.
19 Although the recent divorce decree prevented Defendant from reaping the benefits of Carol's
20 life insurance policies directly, if Defendant had not been suspected of her murder, there is
21 little doubt that Defendant would have exercised control over the face amount of the policies,
22 \$750,000, through his daughters. In addition, the State is awaiting further financial analysis
23 from C.P.A. Richard Echols that the State believes will show further evidence pecuniary
24 gain, but has been frustrated by incomplete disclosure by Defendant's employer, UBS. A
25
26

1 motion to compel an in camera inspection of UBS records has been filed contemporaneously
2 with this motion.

3 **C. 13-703(f)(6): The defendant committed the offense in an especially**
4 **heinous, cruel or depraved manner.**

5 “Cruelty exists if the victim consciously experienced physical or mental pain prior to
6 death and the defendant knew or should have known that suffering would occur.” “Mental
7 anguish includes a victim's uncertainty about [his] ultimate fate.” *State v. Bearup*, 221 Ariz.
8 123, ¶ 48, 211 P.3d 684, 693 (2009)(citations omitted). “Another factor we have found to
9 demonstrate a heinous or depraved state of mind is the infliction of gratuitous violence on the
10 victim.” *State v. Gretzler*, 135 Ariz. 42, 51, 659 P.2d 1, 10 (1983).

12 We think that defendant's conduct in continuing his barrage of
13 violence, inflicting wounds and abusing his victims, beyond the
14 point necessary to fulfill his plan to steal, beyond even the
15 point necessary to kill, is such an additional circumstance of a
16 * * * depraved nature so as to set it apart from the “usual or the
17 norm.” 126 Ariz. at 40, 612 P.2d at 496, quoting *State v. Ceja*,
18 supra, 115 Ariz. at 417, 565 P.2d at 1278.

19 *Gretzler*, at 42, 51, 659 P.2d 1, 10 (1983).

20 Yavapai County Medical Examiner Dr. Keen stated there is evidence that Carol
21 suffered greatly before her death. Both Dr. Keen and Dr. Fulginiti believe that the multiple
22 blows to Carol's skull were the result of repeated forceful blows from a golf club-like
23 instrument. There is also evidence that Carol was beaten after she went down and was
24 unconscious. The State will present this evidence at hearing to show that Carol's murder was
25 committed in an especially cruel, heinous and depraved manner.

26 **D. 13-703(f)(12): The defendant committed the offense to prevent a person's**
cooperation with an official law enforcement investigation, to prevent a person's
testimony in a court proceeding, in retaliation for a person's cooperation with an
official law enforcement investigation or in retaliation for a person's testimony
in a court proceeding.

1 There is evidence that Defendant both submitted false financial information to the
2 Court during divorce proceedings and submitted false information to the Internal Revenue
3 Service when filing his tax returns. Conviction on either of these crimes would have resulted
4 in a suspension or revocation of the license required for Defendant to continue his
5 employment as a financial advisor. Shortly before her death, Carol confided in her
6 accountant that she would give the information she possessed to the appropriate authorities
7 so that Defendant would be held accountable for his transgressions. The State is awaiting
8 further financial analysis from C.P.A. Richard Echols that the State believes will show
9 further evidence that Carol's brutal murder was committed to prevent her from providing that
10 information to law enforcement or testifying regarding the information in a court proceeding.

13 **E. 13-703(f)(13): The offense was committed in a cold, calculated manner**
14 **without pretense of moral or legal justification.**

15 As described in Paragraph E, it is the State's belief that Defendant planned and
16 executed Carol's murder in a cold and calculated manner. Simply stated, Defendant ambushed
17 Carol. Defendant was well aware of Carol's habit of running near her home after work most
18 evenings. Defendant also knew Carol would be home alone that evening since their daughter
19 Katie had just recently left the country and Carol had sent a text message to Defendant that he
20 could come out that evening to pick up Katie's car. There is evidence that Defendant entered
21 the home from the ranch land directly behind the home after he stashed his bicycle in the
22 brush while Carol was out on her evening run. Once in the house, Defendant laid in wait for
23 her to return. Defendant also knew there was a golf club at the residence. Both Dr. Keen and
24 Dr. Fulginiti will testify that the blows to Carol's skull were caused by a golf club-like object.
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1 There is adequate evidence in this case that Defendant committed Carol's murder in a cold,
2 calculated manner.

3 **CONCLUSION:**

4 At the evidentiary hearing requested by the parties on the issues of whether there is
5 probable cause to support Death Penalty Aggravators the State will present evidence to
6 support all aggravators. Additionally, the State requests that this Court take judicial notice of
7 all the evidence that has been presented in previous hearings on this case. Finally, the State
8 requests that this Court grant it leave to file a delayed response to Defendant's Motion to
9 Dismiss Death Penalty Notice on the grounds that complete analysis of Defendant's financial
10 records has been frustrated by Defendant's employer. The State will present this evidence at
11 the requested evidentiary hearing and will file a completed written response to Defendant's
12 motion promptly upon receipt of analysis of these records from C.P.A. Robert Echols.
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15 RESPECTFULLY SUBMITTED this 16th September, 2009.

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17
18 Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

19
20 By: 

21 Joseph C. Butner
22 Deputy County Attorney
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1 COPIES of the foregoing delivered this
2 16th day of September, 2009 to:

3 Honorable Thomas J. Lindberg
4 Division 6
5 Yavapai County Superior Court
6 (via email)

7 John Sears
8 107 North Cortez Street, Suite 104
9 Prescott, AZ 86301
10 Attorney for Defendant
11 (via email)

12 Larry Hammond
13 Anne Chapman
14 Osborn Maledon, P.A.
15 2929 North Central Ave, 21st Floor
16 Phoenix, AZ
17 Attorney for Defendant
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19 By: 
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